

# **Race as an Institutional Factor in the Arrest, and the use of Excessive and Deadly Force against African American Males**

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## **Abstract**

*These authors assert that race is a determinant used by police officers to arrest and use deadly force against African American males. Race is an institutionalized factor that is embedded and widespread in society's social structure. Hence, the institutional discrimination perspective is utilized to explain the issue of race. Institutional discrimination consists of practices or organizations and institutions that have a harmful effect on members of subordinate groups, in this case, African American males. Because race is institutionalized in the social structure, it is not surprising that law enforcement agencies use race as a factor in the arrest and deadly force against African Americans.*

## **Introduction**

Crime data indicates that blacks are more likely to get arrested, sentenced and convicted than whites. Self-reported studies indicate that African American and white suspects are generally similar in behavior and that the differences in arrest statistics may indicate a differential selection policy by police.<sup>1</sup> Police are more likely to apprehend black and Latino males than any other group. Evidence of racial bias in the arrest process can be found in police

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<sup>1</sup> Paul Tracy, "Race and Class Differences in Official and Self-Reported Delinquency" in *From Boy to Man, From Delinquency to Crime*, ed. Marvin Wolfgang, Terence Thornberry, and Robert Figlio. (University of Chicago, 1987).

officers profiling African Americans and searching their cars without probable cause or reasonable suspicion.<sup>2</sup> Suspects who are poor, black or male are more likely to be formally arrested than white suspects.<sup>3</sup> Engle and Calnon found that young African American and Latino males are more likely to be stopped by police and cited, searched, and arrested even though, they are no more likely to be in the possession of illegal contraband than whites.<sup>4</sup>

In this paper, the authors assert that race is institutionalized, not only in police departments, but is also a determining factor in practically every social institution in America. This assertion is supported by the findings reported by the U.S. Department of Justice in Ferguson, Missouri, which showed that:

There are stunning racial disparities in both police traffic stops and use of force, including deadly force, none of which could be explained by any differences in the rate at which people of different races violate the law. These disparities occur, at least in part, because of unlawful bias against and stereotypes about African Americans.<sup>5</sup>

Moreover, the Justice Department found:

That there also racial disparities in the court's fine assessment practices. The average fine assessment was higher for African Americans than for (whites). African Americans were assessed an average fine of \$206, whereas the average fine for others was \$147. The magnitude of disparities in fines assessed on the basis of race consistently disfavored African Americans.<sup>6</sup>

In addition to the racial disparity analysis, the Justice Department also concluded that the City of Ferguson's police department and judicial system focused on generating revenue for the city by

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<sup>2</sup> Larry Siegel *Criminology* (Wadsworth Cengage Learning, 2012).

<sup>3</sup> M. Sealock and S. Simpson "Unraveling Bias in Arrest Decisions: The Role of Juvenile Offender Type-Scripts" *Justice Quarterly* 15, (1998): 427-457.

<sup>4</sup> R.S. Engel and J. Calnon "Examining the Influence of Drivers Characteristics during Traffic Stops with Police from a National survey" *Justice Quarterly*, 21, (2004): 49-90.

<sup>5</sup> United States Justice Department, Civil Rights Division: *Investigation of Ferguson Police Department*. (Government Printing Office, March 2015).

<sup>6</sup> Ibid. page, 69.

ticketing and assessing fines disproportionately on the majority black population and the poor for various type infractions.<sup>7</sup>

### **Theoretical Consideration**

Carmichael and Hamilton noted that not all, and perhaps not even most, discrimination is perpetrated by individuals. Our social institutions i.e., well established structures such as family, the state, the educational system, the economic system, and religion, which perform basic functions in society, play a critical role in the creation and perpetuation of racial inequality.<sup>8</sup> Institutional discrimination is applied, in this study, to explain police behavior in the arrest, use of force, including deadly force, against people of color, especially African American males. Institutional discrimination is more subtle, less obvious, and more indirect in application than individual discrimination. Although a considerable amount of discrimination tends to be unintended, it yields outcomes that are discriminatory in effect.<sup>9</sup> The issue of race is entrenched in customs, laws, and social practices. Therefore, discriminatory patterns and practices are likely to persist in the areas of banking, criminal justice, employment, education, health care, housing, and many other areas in the private and public sectors.<sup>10</sup>

James Comey, the Director of Federal Bureau of Investigation, noted that law enforcement agencies' history is based on discriminatory practices against minority groups. He further noted that people use "*race*" unconsciously in making decisions. People in the white-majority culture practice unconscious racial bias and react differently to a white face than a black face. Racial bias, however, is not confined to law enforcement any more than its existence in any

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<sup>7</sup> Ibid. page, 12

<sup>8</sup> S. Carmichael and C. V. Hamilton *Black Power: The Politics of Liberation in America* (New York: Vintage Books, 1967).

<sup>9</sup> Martin Marger, *Race and Ethnic Relations*. 8<sup>th</sup> ed. Wadsworth Cengage Learning, 2009.

<sup>10</sup> Vincent Parrillo, *Strangers To These Shores*. 11<sup>th</sup> ed. Pearson

other institution in America.<sup>11</sup> Although unconscious discrimination oftentimes does not reflect a deliberate effort to discriminate, it is nonetheless important to recognize that unconscious discrimination has a disparate impact on those who are disadvantaged. It is also important to recognize that it is deeply rooted in society's racially unequal power structure.<sup>12</sup> To further demonstrate the practice of *race unconsciousness*, a study conducted by CNN indicated that prejudice and stereotypes is culturally transmitted. In this study, researchers

Asked children, between the ages of 5 and 10 years old, a series of questions addressing the issue of race. They found that white children were more likely to respond with a high rate of "white bias." White children identified their skin color with positive attributes and darker skin with negative attributes. Black children were found to display some bias toward whites, but far less than the bias white children display towards blacks. White children were found to embrace stereotypes much more strongly than the African-American children.<sup>13</sup>

Institutional discriminatory practices are so interwoven in customs, norms, traditions, policies, and laws, until persons attempting to provide racially sensitive assistance to racially insensitive individuals are oftentimes unaware that they too perpetuate unfair practices on the basis of race.<sup>14</sup> For example, if poverty and the lack of jobs perpetuate crime in urban areas that may be construed that economic development is woefully inadequate in poor inner communities. Industries tend to locate and create jobs in the suburbs rather than in inner city urban areas where high unemployment and catastrophic under-employment proliferates. The location of these jobs

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<sup>11</sup>James Comey, "Hard Truths and Calls for Open Discussion" (U.S. Department of Justice: Government Printing Office. 2015)

<sup>12</sup>John Farley, *Majority-Minority Relations* 6<sup>th</sup> ed. (Boston: Prentice Hall, 2010).

<sup>13</sup> CNN, Study: white and black children biased toward lighter skin" May 2010.  
<http://www.cnn.com/2010/US/05/13/doll.study/>

<sup>14</sup> Vincent Parrillo, *Strangers To These Shores*. 11<sup>th</sup> ed. (Boston: Pearson, 2014).

negatively affect blacks who might qualify for them but reside mainly in urban areas where the jobs do not exist.<sup>15</sup>

### **Brief historical context of race in America**

DuBois' noted that "The problem of the twentieth century is the problem of the color line".<sup>16</sup> Race remains a polemic issue in the twenty first century. Issues of race and race ideology are subverted through the proliferation of practices requiring adherence to the laws of the U.S. Constitution. Moreover, some decisions mandated by the U.S. courts further suppress and subordinate African Americans and people of color. Intended or not intended, the subordinate status of African Americans was laid in the foundation of the United States Constitution. The U.S. Constitution, as a document, structured and defined the organization of American government and group relationships to that government as well as within society. One needs only to review critical *Articles* in the U.S. Constitution to discern how African Americans were categorized as a subordinate group upon the very founding of this country. From the outset, African Americans were marginalized as part of a compromise for congressional representation.

As a social and political construction, race has been codified in laws and policy through a history of cultural and political domination. Consequently, prior to the Civil War, black rights were suppressed continuously. In *Prigg vs. Pennsylvania* (1842) the U.S. Supreme Court upheld the Fugitive Slave Act requiring slave-owners' human property, i.e., slaves themselves, be returned to their masters. Then, in *Jones v. Van Zandt* (1847) the court staggered into defining slavery as a "scared compromise" in the constitution. The status of newly freed blacks after the Civil War was even more precarious. Judge Higginbotham outlines how the United States

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<sup>15</sup> Martin Marger, *Race and Ethnic Relations*, 8<sup>th</sup> ed. (United States: Wadsworth Cengage Learning, 2009).

<sup>16</sup> W.E.B. DuBois, *An ABC of Color* (New York: Columbia Press, 1969)

Supreme Court sanctioned racial hatred by establishing public policy inimical to the fair treatment of African Americans in the 1883 Civil Rights Cases.<sup>17</sup>

Even after the Civil War, the Court continued to favor policy grounded on the perceived inferiority of black people and the legitimization of racism through the establishment of “separate but equal” accommodations (Civil Rights Act of 1875 and *Plessey v. Ferguson*, 1896). Moreover, the colonization of African countries by Europeans, coupled with the capturing of Africans to be made slaves, gave rise to the issue of race and race relations in the United States. This provided the impetus for the United States Constitution to use the issue of race to exclude Africans as citizens. These practices gave rise to the notion of ethnocentricity and led whites to believe that they are the dominant race. This fostered a national attitude, which reinforced how race is applied unconsciously and sometimes consciously against blacks in the social structure. Despite the fact that slavery ended in this country years ago, Collins lamented that the legacy of race is deeply embedded in current patterns of prejudice and discrimination against African Americans.<sup>18</sup> This brief history explains how race is institutionalized and provides an explanation for how and why police officers use race as a determinant to arrest, use force, including deadly force, against African American males.

### **Police Arrest of African Americans**

Since race is so deeply rooted in the social structure and intertwined in how American society functions, African Americans are far more likely than whites to have negative encounters

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<sup>17</sup> A. L. Higginbotham Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process*. (New York: Oxford University Press, 1966).

<sup>18</sup> P. H. Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. (New York: Harper Collins Academic, 1990).

with law enforcement and express more discontent.<sup>19</sup> African Americans consistently report that they believe that the police treat them unfairly or have experienced unfair treatment themselves.<sup>20</sup> The Gallup Poll also found that thirty-seven percent of African Americans said that they had been “unfairly stopped by police,” compared with only 4 percent of whites.<sup>21</sup> Similarly, a majority of blacks’ say that they or a family member have personally experienced being treated unfairly by the police strictly on the basis of race. Half of African-American respondents, including 6 in 10 black men, said they had been treated unfairly by police because of their race, compared with 3 percent of whites. Another 15 percent said they knew of a family member who had been treated unfairly by the police because of their race.<sup>22</sup>

Proponents of racial profiling argue that profiling is an effective method in the fight against crime. This encourages police officers to focus on Black and Latino males because they are believed to be the mostly likely criminal suspects. One of the most widely publicized incidents of profiling in recent memory occurred in the New York Police Department (NYPD). The NYPD initiated a stop and frisk policy in 2002.

The policy allowed officers to profile individuals they believed to be involved in crime. The NYPD’s stop and frisk report indicated that the majority of stop and frisk incidents involving African Americans did not support their contentions of criminal suspects. In 2012, the NYPD stopped 532,911 citizens in the city of New York. The data show that 284,229 (55 percent) were African American, 165,140 (32 percent) were Latino and 50,366 (10 percent) were white. Incredulously, 473,644 (89 percent) were innocent.

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<sup>19</sup> R. Weitzer and S. Tuch, “Racially Biased Policing: Determinants of Citizen Perceptions” *Social Forces*, 83 (2005): 1009-1030; R. Weitzer and R. Brunson, “Strategic Responses to the Police Among Inner City Youth” *Sociological Quarterly*, 50: (2009):235-256.

<sup>20</sup> Samuel Walker., C. Spohn., M. Delone. *The Color of Justice: Race, Ethnicity, and Crime in America*. (United States: Thomson and Wadsworth, 2007).

<sup>21</sup> Gallup Poll, cited in Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics*, 2003.

<sup>22</sup> “Half of Black Say police have treated them unfairly” *Associated Press*, NORC Center for Public Affairs Research, August 5, 2015. <http://news.yahoo.com/half-blacks-police-treated-them-unfairly-071758015--politics.html#>

Additionally, in 2013, there were 191,558 New Yorkers who were stopped by the police of which 104,958 (56 percent) were African American, 55,191 (29 percent) were Latino and 20, 877 (11 percent) were white. It was also found that 169, 252 (88 percent) were totally innocent. The New York Civil Liberties Union (2014) also found that innocent New Yorkers have been subjected to police stops and street interrogations more than five million times since 2002 and that African American and Latino communities were disproportionately targeted for such search frisk tactics.<sup>23</sup>

Meehan and Ponder found that police officers were likely to use racial profiling to stop African American motorists traveling in predominantly white neighborhoods.<sup>24</sup> An African American driving in an all-white neighborhood is viewed by white police officers as suspicious and out of place.<sup>25</sup> An overview of studies on race and the criminal justice process concluded that most studies reveal what police officers freely admit that race is significantly independent, as a causal or determinative factor in deciding who to follow, search, or arrest.<sup>26</sup> Research also reveals that a person's color and physical attributes are important factors in shaping police officers' discretion and decision-making to stop and arrest people of color.<sup>27</sup> These practices lead to a higher concentration of blacks in arrest data and the over-representation of blacks in the criminal justice system.<sup>28</sup> For police officers, this oftentimes results in overestimating young Africa-American males as a threat. Police officers who dehumanized blacks were also likely to

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<sup>23</sup> New York Civil Liberties Union, *Racial Justice: Stop and Frisk Practices*, New York, New York Civil Liberties Union, 2014.

<sup>24</sup> Albert Meehan and Michael Ponder, Race and Profiling African American Motorists. *Justice Quarterly* 19, (2002):399-430, 2002

<sup>25</sup> R. Weitzer and S. Tuck, "Perception of Racial Profiling: Race, Class, and Personal Experience" *Criminology* 40, (2002): 435-456.

<sup>26</sup> "Developments in the law: Race and the Criminal Process" *Harvard Law Review* 101, (1988): 1496.

<sup>27</sup> D. Steffensmeier and S. Demuth, "Ethnicity and Judges' Sentencing Decisions" *Criminology*, 39 (2001):145-178. M. Sealock and S. Simpson, "Unraveling Bias in Arrest Decisions: The Role of Juvenile Offender Type-Scripts" *Justice Quarterly*, 15, (1998):427-457; Jerome Miller, *Search and Destroy: African American Males in the Criminal Justice System*, New York, Cambridge University Press, 1996; Alan Lizotte, "Extra-Legal Factors in Chicago's Criminal Court: Testing the Conflict Model of Criminal Justice" *Social Problems*, 25: (1978):564-580.

<sup>28</sup> Amnesty International U.S.A. *Threat and Humiliation: Racial Profiling, domestic Security, and Human Rights in the United States*. U.S. Domestic Rights Program. Amnesty International, 2004.



have had a record of using force on black youths in custody. They also found that white police officers viewed black youth as less innocent than their white counterparts. The perception that blacks have superhuman strength leads police officers to use deadly force. Therefore, the only way to deal with someone like that is to put him down.<sup>29</sup>

### **Police Officers use of Deadly Force against African American Males**

African Americans are treated differently based on stereotypes and perceptions that they are more likely to be dangerous to the community.<sup>30</sup> Police officers' use of deadly force on alleged African American male suspects demonstrates the belief that black lives are not highly valued. Donald Black provided data that suggest that black lives are not highly valued in society. Black laments:

When people offend a social superior or inferior, different pattern emerges. Those accused of offending persons above them in social status (whites) are likely to be handled more severely than those accused of offending someone below them (blacks). Those victimizing a white, inhabit a legal space all of their own, with a risk of severity greater than anyone else. When a black suspect is convicted of killing a white, the risk of capital punishment leaps far beyond any other racial combination. When a white suspect is convicted of killing a black, the risk of capital punishment is approximately zero.<sup>31</sup>

Similarly, Levine and Montgomery also found that African Americans who killed whites are four times more likely to get a death sentence than whites who kill blacks.<sup>32</sup> These subtle messages

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<sup>29</sup> P.A. Golf; M.C. Jackson; B. Allison; L.D. Leone; C.M. Culotta and N. A. DiTomasso, The Essence of Innocence: Consequences of Dehumanizing Black Children, *Journal of Personality and Social Psychology*, published online February 2014.

<sup>30</sup> Justin Hayes-Smith and Rebecca Hayes Smith, "Race, Racial Context, and Withholding Adjudication in Drug Cases: A Multilevel Examination of Juvenile Justice" *Journal of Ethnicity in Criminal Justice*, no7:3, (2009):163-185.

<sup>31</sup> Donald Black, *Sociological Justice*. New York, Oxford Press.

<sup>32</sup> Susan Levine and Lori Montgomery, "Large Racial Disparity Found by Study of Maryland Death Penalty" *The Washington Post*, January 8, 2003 p. A1.

provide justification for police officers to use excessive and deadly force when confronting African American males.

In recent months if not years, African American males have turned out to be neither armed nor guilty of any crime, but have been killed by police officers who may well have reacted, at least partly, to the color of one's skin.<sup>33</sup> For instance, in the case of Amadou Diallo, a black male in New York, four officers, mistaking his wallet for a handgun, fired forty-one shots at him, striking him nineteen times. The police officers, who were involved in the shooting, were acquitted of all charges.<sup>34</sup> A more notable case, which occurred in Florida in 2012, did not involve law enforcement personnel, but a person acting as a peace officer in the form of a neighborhood security. George Zimmerman, a security guard, called 911 because he believed that a suspicious black male youth was in the wrong place. Zimmerman was unaware that the unarmed suspicious black youth, he had shot and killed, Trayvon Martin, lived in the neighborhood. Zimmerman was also acquitted of the charges of murder.<sup>35</sup>

On August 9, 2014, Michael Brown, an unarmed black male, was shot and killed by a white police officer in Ferguson, Missouri. It was alleged that Michael Brown held his arms in the air and said "do not shoot", but the white officer shot and killed him anyway. The facts of the case were ultimately decided by the grand jury, which issued a No Bill, not to prosecute the white police officer.<sup>36</sup> The United States Department of Justice investigated the white police officer's shooting of Michael Brown, an unarmed black suspect, and the racial disturbance that occurred in Ferguson, Missouri as a consequence of No indictment for the white police officer.

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<sup>33</sup> John Macionis, *Social Problems*, 6<sup>th</sup> ed. (Boston, Pearson, 2015).

<sup>34</sup> K. J. Peak, *Policing America: Methods, Issues, Challenges* 5<sup>th</sup> ed. (New Jersey: Pearson, 2006).

<sup>35</sup> Jason Silverstein, "On Ending Racial Profiling in America" *Huffington Post*, 2012.

<sup>36</sup> "Ferguson Michael Brown Grand Jury" *New York Times*, A17, 2014.

The Justice Department found significant disparities in the Ferguson Police Department's use of force against African Americans. More specifically the Justice Department found:

That nearly 90 percent of documented force used by the Ferguson Police Department was leveled against African Americans. These disparities occur, at least in part, because of unlawful bias and stereotypes that the white police officers had about African Americans. The report also found evidence of substantial racial bias among police officers and the court staff in Ferguson. Police supervisors and leadership did little to ensure that officers act in accordance with law and policy, and rarely responded to citizens' complaints of officer misconduct. The result is a pattern of stops without reasonable suspicion and arrests without probable cause and use of excessive force in violation of the Fourth Amendment.<sup>37</sup>

### **Summary and Discussion**

The authors assert that race continues to be a controversial issue in this country in spite of the country electing an African American as President of the United States. Race is not only an issue in the criminal justice system, but it is also embedded and widespread in other institutions and organizations. For example, banks are less likely to give mortgage loans to African Americans and if they do, blacks are given higher interest loans than whites. Eckholm found that "Black and Hispanic home buyers tend to pay higher interest rates than whites with similar credit ratings."<sup>38</sup> At the University of Oklahoma, a white fraternity was found singing a racist chant. The fraternity members chanted "hanging a black from a tree." It was later learned that chant was taught on a national leadership cruise that was sponsored by the fraternity's national

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<sup>37</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, (Washington, DC, Government Printing Office, March 4, 2014).

<sup>38</sup> Erik Eckholm, "Black and Hispanic Home Buyers Pay higher Interest on Mortgages" *New York Times*, June 1, 2006.

organization.<sup>39</sup> Honda Corporation reached a settlement to resolve allegations that the company discriminated against minority (African Americans, Latinos, and Asians) car buyers by marking up interest rates on loans. This is a practice industry experts describe as common because of the discretion given to individual dealerships.<sup>40</sup> These aforementioned incidents, as well as the CNN study, which found that white children internalize stereotypes much more strongly than African American children, affirm the notion that race is a strong indication of institutional discrimination / structural discrimination and that racial bias and racial discrimination is culturally transmitted.

Consequently, it is not surprising that police officers employ race to stop, arrest, and excessive and deadly force against blacks and Latinos. In general, whites view blacks as suspicious or involved in some type of crime. Concomitantly, when these cases are brought before the district attorney's office, they may not view the shooting of a black male significant enough to warrant prosecution. Hereto, prosecutorial misconduct may suggest that alleged black suspects must be guilty of something even though there is no evidence to prove otherwise. Excluding the shooting of unarmed blacks, by the police following Hurricane Katrina, rarely are police officers prosecuted for using excessive and deadly force against an alleged unarmed black male suspect. When brought to trial for shooting unarmed black suspects, white police officers are usually acquitted or found guilty of lesser charges. In Cleveland, Ohio, the judge, who heard the case of an unarmed black suspect, shot by a white police officer, stated that he would not "sacrifice" this police officer to the anti-police sentiment that has swept across America in the

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<sup>39</sup> N. Koppel, "University of Oklahoma: Racist Chant Learned at National Event" *The Wall Street Journal*, March 27, 2015.

<sup>40</sup> "Honda will pay \$24 million for overcharging minorities" *Associated Press*, July 15, 2015

wake of other police shooting of unarmed black suspects. The white officer was acquitted of voluntary manslaughter.<sup>41</sup>

In the *Tennessee v. Garner* case (1985), the U.S. Supreme Court decided when police officers can use deadly force under limited circumstances. Since the Garner decision, states have revised their laws regarding when officers can employ deadly force. States revise laws not, for the protection of innocent suspects, but for the protection of police officers. In the Michael Brown case, for example, even though he held his hands above his head, his slight movement towards the police gave the police justification to use deadly force according to the Missouri law.

Police officers have a myriad of duties and responsibilities; they have to make split second decisions to resolve crime and protect society.<sup>42</sup> But, at the same time, they must also solve problems, prevent crime and establish positive community relations. Blacks and Latinos, however, have a distrust of the police. This distrust is based on the practice of racial profiling by the police and the use of excessive and deadly force against African Americans and Latinos. Police departments however, view the latter methods as an effective crime control approach.<sup>43</sup>

Although a number of police shootings of unarmed black suspects have been captured on cell phone videos and broadcast nationally, these incidents are not new; these shooting have been occurring for decades. Until the North Charleston video shooting, there has not been an indictment against a white officer for shooting an unarmed black suspect. These incidents have been covered up by either the police department or the district attorney's office. The killing of an unarmed black suspect is generally ruled justifiable. Investigations conducted by police

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<sup>41</sup>“Protests, arrests after Cleveland cop's acquittal” *Associated Press*, May 24, 2015.

<sup>42</sup> R. Reiner, *The Politics of the Police*, 4<sup>th</sup> ed. (Oxford: Oxford University Press, 2010); P. Manning, *Democratic Policing in a Changing World* (Boulder, Colorado: Paradigm Publishers, 2010); M. Neocleous, *The Fabrication of Social Order: A Critical Theory of Police Power* (Sterling, VA: Pluto Press, 2000); A. Goldsmith, “Police Reform and The Problem of Trust” *Theoretical Criminology*, 9(4): (2005):443-470.

<sup>43</sup> R. Kennedy, “Suspect Policy” *New Republic*, September (199):30-35.

departments, district attorneys' office and other police agencies (local and state) into the killings of unarmed black suspects is not without bias. To this end, this research recommends the utilization of independent citizens' review board to investigate shootings by police officers. An independent and representative citizens' reviews board may contribute to better police-community relations in the black community. Until race is no longer an issue in America, African Americans and Latinos will continue to receive unequal justice. Racial bias and discrimination, however, are nearly impossible to eliminate because it is deeply embedded into the social structure.

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